

TENNESSEE REGULATORY AUTHORITY

Melvin Malone, Chairman
Lynn Greer, Director
Sara Kyle, Director



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

MEMORANDUM

TO: Chairman Melvin Malone
Director Lynn Greer
Director Sara Kyle

FROM: Eddie Roberson *ER*
Chief, Consumer Services Division

Richard Collier *RC*
General Counsel

DATE: January 27, 2000

SUBJECT: Proposed Settlement Agreement with U.S. Republic (Docket # 99-00793)

On October 12, 1999, the Tennessee Regulatory Authority ("Authority") opened the above docket for the purpose of additional investigation into the practices of U.S. Republic. The Consumer Services Division (hereafter the "Staff") contended that U.S. Republic was engaging in the practice of cramming. Since the opening of the docket the Staff has been working with U.S. Republic to address the complaints. U.S. Republic has also been the target of an investigation by the Federal Trade Commission ("FTC"). U.S. Republic has settled with the FTC. We are glad to report that we have reached a settlement with U.S. Republic, the terms of which are attached.

This is the first formal enforcement action taken by the Authority applying Tenn. Code Ann. § 65-4-125 for alleged cramming complaints. While U.S. Republic does not admit to any wrongdoing, it has agreed to cease doing all business in Tennessee, notify all its existing customers that they may qualify for refunds, provide full restitution to Tennessee customers who claim they were crammed, provide the Staff with reports on the customers requesting and receiving refunds and any other information that will ensure compliance with this Settlement Agreement and pay the Authority a sum of \$45,200.

U.S. Republic has also raised concerns how the Staff will share information concerning this Settlement Agreement with other states. While recognizing that this Settlement Agreement and the record in this case are matters of public record, U.S. Republic has requested that the Staff not affirmatively publicize this Settlement Agreement through press releases. The Staff has agreed to this request. The Staff notes, however, that this understanding is not binding on the Authority or a part of the Settlement Agreement or

U.S. Republic Settlement
January 27, 2000
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required to be a part of any subsequent Authority Order. The Staff also notes that should the media or public inquire about the Settlement Agreement, the Staff is free to discuss matters of public record including the Settlement Agreement.

It is our understanding that consideration of this Settlement will be on the February 1, 2000 Conference Agenda.

cc: David Waddell
Henry Walker, Counsel for U.S. Republic
Division Chiefs

TENNESSEE REGULATORY AUTHORITY

Melvin Malone, Chairman
Lynn Greer, Director
Sara Kyle, Director



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

EXCLUSIVE SECRETARY

MEMORANDUM

TO: Chairman Melvin Malone
Director Lynn Greer
Director Sara Kyle

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Chief, Consumer Services Division

Richard Collier *RC*
General Counsel

DATE: January 27, 2000

99-00793

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cc: David Waddell
Henry Walker, Counsel for U.S. Republic
Division Chiefs

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE: INVESTIGATION OF U.S. REPUBLIC COMMUNICATIONS, INC.
DOCKET NO. 99-0793

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EXECUTIVE SECRETARY

SETTLEMENT AGREEMENT

The purpose of this document is to memorialize a settlement agreement between U. S. Republic Communications, Inc. ("U.S. Republic") and the Consumer Services Division of the Tennessee Regulatory Authority. U. S. Republic was issued a Certificate of Authority on March 25, 1998 authorizing it as an operator services provider and/or reseller of telecommunications services in Tennessee.¹ U.S. Republic is subject to the applicable laws of the State of Tennessee and to the rules promulgated by the Tennessee Regulatory Authority ("Authority").

Based on the receipt of a number of written complaints from Tennessee customers of U.S. Republic alleging that U.S. Republic was billing customers for Internet website services on their local exchange phone bill which the customer had not agreed to purchase, the Consumer Services Division petitioned the Authority on October 1, 1999, to open a docket for the purpose of further investigation to determine whether grounds existed for the issuance of a show cause order. The Authority approved the opening of a docket on October 12, 1999.

The Consumer Service Division conducted an extensive investigation of each written complaint against U.S. Republic. In an attempt to resolve this matter, U.S. Republic has

¹ Docket No. 96-01737.

issued refunds or credits to each consumer who has complained to the Authority regardless of whether U. S. Republic agrees that the complaint has merit.

Effective March 7, 1999, U.S. Republic discontinued the business of marketing LEC-billed Internet website services in Tennessee. Effective October 5, 1999, U.S. Republic sold its entire website business and related assets. Thus, U. S. Republic has ceased its website business throughout the United States including Tennessee. In the event U.S. Republic reconsiders this decision, it agrees to provide the Consumer Services Division a sixty (60) day notice. This notice shall include the name(s) under which U. S. Republic plans to conduct business and the details of the proposed service, including but not limited to the product name and cost of the service and the method of billing the customer. U. S. Republic agrees as a precondition for re-instituting any Internet website service in Tennessee to not bill for such service(s) on the end users local telephone bill.

Furthermore, U.S. Republic has agreed to transfer its intrastate operating authority to another interexchange carrier, Alliance Network, Inc., (application pending, TRA docket 99-00563). Following this transfer, U.S. Republic will no longer be authorized to provide telecommunications services in Tennessee.

In order to resolve the outstanding complaints, U. S. Republic and the Consumer Services Division have agreed to the terms of the settlement described below. This is not an admission of wrongdoing by U. S. Republic.

A. The Stipulated Final Order for Permanent Injunction and Other Equitable Relief with the Federal Trade Commission filed in the United States District Court for the Southern District of Texas, Civil Action No. H-99-3657, is incorporated into this Settlement

Agreement as Exhibit A. U. S. Republic agrees to be bound by all the terms set forth in Exhibit A as part of this Agreement. In accordance with the aforementioned order between U. S. Republic and the Federal Trade Commission, U.S. Republic will provide written notice to Tennessee Internet website customers and provide full and prompt refunds upon request as provided in Exhibit A.

B. Beyond the time limitations in the Final Order of the Federal Trade Commission ("FTC") [Exhibit A], U. S. Republic agrees to make a full refund to any Tennessee customer billed for Internet website services before May 20, 1999, upon written notification by the customer.

C. For purposes of settlement, U.S. Republic agrees to pay the Authority the sum of Forty-Five Thousand Two Hundred and ⁰⁰/100 (\$45,200.00) to be used for consumer education, TRA regulatory expenses, or such other public purpose as the TRA shall determine. U.S. Republic agrees to pay the sum mentioned above within ten (10) days after the Authority approves this Settlement Agreement.

D. Within six months of the date of this agreement, U. S. Republic shall file with the Authority a list of Tennessee customers (name, address, and telephone numbers) who have requested refunds pursuant to the FTC Agreement and pursuant to paragraph B, *supra*.

E. U. S. Republic must within ten (10) days of receipt of a written request from the Consumer Services Division, provide any documents, books and/or records reasonably necessary to establish to the satisfaction of the Chief of the Consumer Services Division of the Tennessee Regulatory Authority, that U. S. Republic has complied with this Settlement Agreement. This paragraph shall in no way limit the Attorney General's office, the Tennessee

Regulatory Authority or the Division of Consumer Affairs' right to obtain documents, record and/or testimony through any other state or federal law, regulation or rule.

F. U.S. Republic further agrees to be in full compliance with Tenn. Code Ann. § 65-4-125 *et seq.* and the rules and regulations of the Authority.

The parties acknowledge this Agreement is subject to the approval of the Directors of the Tennessee Regulatory Authority.

ENTERED INTO THIS 27th DAY OF January, 2000.

Signature: Michael G. Hoffman

Print name: Michael G. Hoffman

Title: Secretary/Corporate Officer
U. S. Republic Communications, Inc.
200 West Pleasant Run Rd.
Lancaster, TX 75146
(972) 230-7213

Henry Walker
HENRY WALKER
Counsel for U. S. Republic Communications, Inc.
Boult, Cummings, Conners & Berry PLC
414 Union Street, Suite 1600
Nashville, TN 37219
(615) 252-2363

Eddie Roberson
EDDIE ROBERSON
Chief, Consumer Services Division
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0500
(615) 741-2904



**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**U.S. REPUBLIC COMMUNICATIONS, INC.,
a Texas Corporation,**

and

**T. GARY REMY,
individually and as an officer of U.S. Republic
Communications, Inc.**

Defendants.

Civil Action No.

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

Whereas: Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), commenced this action by filing a Complaint on _____; Defendants waived service of the Summons and Complaint; the parties are represented by the attorneys whose names appear hereafter; and the parties are in agreement to settle the Complaint by entering into this Stipulated Final Judgment and Order for Permanent Injunction and other Equitable Relief ("Order") upon the following terms and conditions, without adjudication of any issue of fact or law and without Defendants admitting liability for any of the matters alleged in the Complaint;

THEREFORE, on the joint motion of Plaintiff and Defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

SECTION I.

FINDINGS

- A. This Court has jurisdiction over the subject matter and the parties.
- B. The Complaint states a claim upon which relief may be granted against Defendants under §§ 5(a)(1) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1) and 53(b).
- C. The activities of Defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
- D. Entry of this Order is in the public interest.
- E. Defendants have waived any and all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).
- F. Plaintiff and Defendants, by and through their counsel, have agreed that the entry of this Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Order.
- G. Plaintiff and Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claim they may have against the Commission, its employees, agents, or representatives.

- H. This Order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by Defendants that they have engaged in violations of any law or regulations including but not limited to the Federal Trade Commission Act, or that the facts alleged in the Complaint, other than the jurisdictional facts, are true.

DEFINITIONS

- I. For the purposes of this Order, the following definitions shall apply:
1. "Defendant USRC" means defendant U.S. Republic Communications, Inc., its officers, agents, servants, attorneys, independent contractors and employees, and all other persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.
 2. "Defendant Remy" means defendant T. Gary Remy, his agents, servants, attorneys, independent contractors and employees, and all other persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.

SECTION II

IT IS FURTHER ORDERED that Defendants USRC and Remy are hereby permanently restrained and enjoined from participating or assisting, directly or through any corporation, subsidiary or other entity or intermediary, in the making of any false or misleading representation of material fact, or omitting material information, either expressly or by implication, orally or in writing, in connection with the promotion, marketing, offering for sale, or sale of services related to website design, webpage

design, or the posting or promulgation of webpages, websites, advertisements or other materials on the Internet, including but not limited to false or misleading representations that:

- A. Defendants will not charge consumers unless consumers take affirmative steps to authorize charges during any free-trial period;
- B. Defendants will not assess a recurring monthly charge for website services until thirty days after Defendants have provided consumers with information that will enable the consumers to access and review the website and to cancel the services; and
- C. Consumers are legally obligated to pay charges for website services that have not been authorized by the consumer that Defendants charge or cause to be charged.

SECTION III.

IT IS FURTHER ORDERED that:

- A. In the event Defendants USRC and Remy represent in the promotion, marketing or offering for sale of their services that they will submit websites to specific Internet search engines, they are hereby permanently restrained and enjoined, directly or through any corporation, subsidiary or other entity or intermediary, from failing to disclose that such submissions do not guarantee that the referenced search engines will index or list the websites; and
- B. In the event Defendants represent that they will submit websites to Internet search engines, without identifying specific search engines, Defendants are hereby permanently restrained and enjoined, directly or through any corporation, subsidiary or other entity

or intermediary, from failing to disclose that such submissions do not guarantee that all search engines will index or list the websites.

Provided, however, that Defendants are not required to make such disclosures if the submissions result in the websites being indexed or listed by all major search engines in all or nearly all instances ("major search engines" being defined as the eight most frequently used search engines). *Provided further* that in the event that the FTC issues a final rule in the future on this issue, Defendants' obligations shall be no greater than those imposed by such rule.

SECTION IV.

IT IS FURTHER ORDERED that Defendants USRC and Remy are hereby permanently enjoined, directly or through any corporation, subsidiary or other entity or intermediary, from sending a bill, or causing a bill to be sent, to any consumer for any product or service without first obtaining express, verifiable authorization that the person being charged has agreed to be charged for the good or service in the amount and in the manner set forth in the bill which Defendants have sent or caused to be sent to that consumer. *Provided, however,* that this section shall not be construed to prohibit Defendants USRC and Remy from billing charges to a credit card account number if: the credit card account number is disclosed by a consumer during the course of a call to purchase goods or services; the consumer gives express authorization to bill charges to that credit card account number; the credit card is subject to the dispute resolution requirements of the Fair Credit Billing Act and the Truth in Lending Act, as amended; and the credit card is the sole method used to pay for the charge.

SECTION V.

IT IS FURTHER ORDERED that Defendants are hereby permanently restrained and enjoined from providing to any person, except Defendants' agents, affiliates, subsidiaries, successors and assigns, agents of the Plaintiff or other law enforcement authorities, or as directed by Court Order, the name, address, telephone number, or credit card or bank account number of any consumer who, in response to Defendants' promotion of website services, provided such information to or did business with Defendants, except that Defendants are permitted to post the name, address and telephone numbers of consumers that authorize Defendants' website services on the Internet.

SECTION VI.

IT IS FURTHER ORDERED that:

- A.** Defendants USRC and Remy shall, within forty-five (45) days of the entry of this Order, mail a written notice and a claims application, in a form approved by the Commission, including approval of the envelope, to all customers that:
1. were being billed through local exchange carriers ("LECs") as of May 20, 1999, and new customers signed up for LEC billing between that date and the date of entry of this Order;
 2. have not previously converted to credit card billing in a manner consistent with Section IV of the Order;
 3. have not previously converted to payment by electronic transfer of funds in a manner that complies fully with the provisions set forth at 16 C.F.R. § 310(a)(3); and

4. have not previously received a full credit from either the defendants or the consumers' LECs for all charges related to defendants website services.

- B. The notice described in paragraph A, above, shall clearly and conspicuously notify consumers that 1) they have been billed, and/or are being billed, for USRC's website services; 2) they have a right to cancel; 3) they have a right to request a full credit for all unauthorized charges, along with directions for doing so; and 4) they have the option to convert from LEC billing to direct invoice or credit card billing. Defendants USRC and Remy shall take the necessary steps to have the appropriate LECs provide full credits to all consumers who, in response to the notice, submit a signed claims application stating that the consumer did not authorize the charges. Consumers shall have thirty (30) days from the date of their receipt of Defendants' notice to mail back a completed claims application to Defendants or to Credit Managers Association of California ("CMA").
- C. Defendants USRC and Remy shall enter into a contract with CMA to provide the following auditing and reporting services related to Defendants' execution of the requirements contained in paragraph A of this Section:
 1. Audit Defendants' mailing of notices, as required in paragraph A, through review of an affidavit or declaration to be submitted by Defendants to CMA within ten (10) business days of mailing all required notices. The affidavit or declaration shall, at a minimum, affirm the following:
 - a. the means used by Defendants to generate the list of consumers eligible to receive a notice;

- b. the means used by Defendants, including use of the National Change of Address registry, to assure that consumers' addresses are accurate;
 - c. the number of notices sent and the dates on which they were sent; and
 - d. a copy of the actual mailing sent;
- 2. Audit Defendants' mailing of notices, as required in paragraph A, through review of an affidavit or declaration to be submitted by Defendants to CMA within thirty (30) days of mailing all required notices. The affidavit or declaration shall, at a minimum, affirm the number of notices returned by the Post Office as undeliverable, and the reasonable efforts made by Defendants, such as calling the phone number that is billed and asking for a current address, to obtain valid addresses for those consumers and re-mail those notices;
- 3. Request and review such documents as needed from Defendants or consumers to verify that Defendants have sent redress notices in compliance with this Section;
- 4. Receive completed claims applications directly from consumers, and compile a list of those consumers that state on their signed claims applications form that they were billed through a LEC for USRC services, and that the charges were not authorized by the consumer, along with the name of the LEC and the telephone number that was billed. Within ten days of receipt of an incomplete or unsigned claims application, contact consumers as necessary to obtain missing information, with the cooperation of Defendants;
- 5. Provide the list of consumers eligible for a credit to the Defendants and to the

Commission, and then audit the Defendants to assure that Defendants have taken the necessary steps to assure that the appropriate LECs provide full credits to all consumers that are on the list of consumers eligible for a credit; and

6. Provide a report to the Federal Trade Commission and to Defendants describing the efforts taken by CMA, the results of all audits, and outlining Defendants' compliance with this Section.
- D. Defendant USRC shall obtain and maintain an irrevocable letter of credit in the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000) from an FDIC-insured bank, payable solely to the Federal Trade Commission, which shall be used as security for Defendants' obligations under this Section. Defendant USRC shall provide a certified copy of this letter of credit to the FTC within five (5) business days of entry of this Order. This letter of credit shall only be redeemed or released pursuant to the following conditions:
1. If Defendants have not either (1) complied fully with Paragraphs A, B and C of this Section, or (2) been granted an extension of time by the Court, within two-hundred and seventy (270) days of entry of this Order, plaintiff shall have the right to petition the Court to order that funds necessary to provide consumer redress consistent with Paragraphs A, B and C of this Section shall be paid directly to plaintiff through redemption of the letter of credit, in addition to whatever other legal remedies are available to plaintiff; or

2. Plaintiff shall, within fifteen (15) business days of receipt of the report described in paragraph (C)(4) above, notify Defendants and the Court that the Commission either: (1) releases Defendants from their obligation to maintain a Letter of Credit; or (2) is moving the Court to require the Defendants to show cause why they should not be held in contempt for their failure to comply with this Section, in which case the Defendants shall be required to maintain the Letter of Credit until such time as the Court rules otherwise.

SECTION VII.

IT IS FURTHER ORDERED that Defendant Remy shall, within five (5) business days after receipt of this Consent Decree as entered by the Court, submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Consent Decree.

SECTION VIII.

IT IS FURTHER ORDERED that Defendants USRC and Remy, their successors, subsidiaries, affiliates and assigns, shall within thirty (30) days of the entry of this Consent Decree, provide an accurate summary of this Consent Decree that clearly communicates the injunctive provisions contained herein to each of their directors, officers, agents, servants, independent contractors, employees, collection agencies to which they assign accounts, and attorneys that are involved, in any way, with the telemarketing of any Internet-related service, and secure from each such person a signed statement acknowledging receipt of a copy of this summary, and shall, within ten (10) business days of complying with this paragraph, provide

the FTC with an affidavit setting forth the fact and manner of their compliance, including the name and title of each person to whom a copy of the summary has been provided.

SECTION IX.

IT IS FURTHER ORDERED that:

- A. For a period of five (5) years from the date of entry of this Consent Decree, Defendants USRC and Remy shall notify the Commission of the following:**
- 1. Any changes in their residence, mailing addresses, and telephone numbers, within ten (10) business days of the date of such change;**
 - 2. Any changes in their employment status (including self-employment) within ten (10) business days of such change. Such notice shall include the name and address of each business with which such defendant is affiliated or employed, a statement of the nature of the business, and a statement of the defendant's duties and responsibilities in connection with the business or employment; and**
 - 3. Any change in the structure of Defendant USRC, such as creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries or affiliates, filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Consent Decree, within ten (10) business days of any such change.**
- B. One hundred eighty (180) days after the date of entry of this Consent Decree, Defendant Remy shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in**

detail the manner and form in which he has complied and is complying with this Consent Decree. This report shall include, but not be limited to:

1. The Defendant's then current residence address and telephone number;
2. The Defendant's then current employment, business addresses and telephone numbers, a description of the business activities of such employer, and defendant's title and responsibilities for such employer;
3. A statement describing the manner in which defendant has complied and is complying with the provisions of this Consent Decree.

C. For a period of five (5) years from the date of entry of this Consent Decree, upon written request by a representative of the Commission, Defendants shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) business days' notice with respect to any conduct subject to this Consent Decree, subject to Defendants' right to seek relief from the court under Rule 26(c) of the Federal Rules of Civil Procedure or under any other appropriate provision of the rules.

D. For a period of five (5) years from the date of entry of this Consent Decree, upon written request by a representative of the Commission, Defendants shall permit Commission staff to interview any employee of Defendants in the presence of counsel for Defendants, and subject to the same rights to counsel as set forth in 15 U.S.C. § 57b-1, and, should the interview not take place at Defendants' place of business or a similarly convenient location, the same rights to remuneration for travel expenses afforded to witnesses summoned before the Commission set forth in 15 U.S.C. § 49.

- E. For the purposes of this Consent Decree, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:**

**Associate Director
Division of Marketing Practices
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20580**

SECTION X.

IT IS FURTHER ORDERED that the Commission is authorized to monitor the Defendants' compliance with this Consent Decree by all lawful means, including but not limited to the following means:

- 1. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 34, 36 and 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating the Defendants' compliance with any provision of this Consent Decree, subject to Rules 26(c), 45(c) and any other provisions of the Rules providing the person with the right to seek relief from the court;**
- 2. Nothing in this Consent Decree shall limit the Commission's lawful use of compulsory process, pursuant to §§ 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether Defendants have violated any provision of this Consent Decree, the Telemarketing Sales Rule, or Section 5 of the FTC Act, 15 U.S.C. § 45, subject to Defendants right to request relief from the courts.**

10/20/99 WED 10:33 FAX 202 326 3395

FEDERAL TRADE

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IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purposes of enabling any of the parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Consent Decree, for the enforcement of compliance therewith, related to the monitoring provisions therein, or for the punishment of violations thereof.

JUDGMENT IS THEREFORE ENTERED in favor of plaintiff and against Defendants, pursuant to all the terms and conditions recited above.

Dated this ____ day of _____, 19 __.

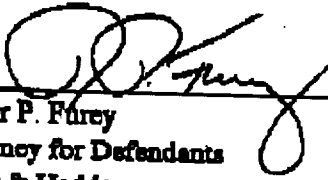
UNITED STATES DISTRICT JUDGE

The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof.

Dated: October 19 1999


FOR THE DEFENDANTS:

U.S. REPUBLIC COMMUNICATIONS, INC.

By: 
Roger P. Furey
Attorney for Defendants
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1801 K Street NW
Suite 400K
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(202) 775-7135


T. GARY REMY
Individually and as President of
U.S. Republic Communications, Inc.

**FOR THE FEDERAL TRADE
COMMISSION:**


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